IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8310 OF 2007

Nazreth Michael Mankar ....Petitioner

Versus

The State of Maharashtra

and Ors.

.....Respondents.

A.G.Damle for the petitioner.

Ms.V.S.Mhaispurkar, AGP for respondents.

Mr.R.S.Ghudge i.by.A.S.Desai for respondent no.2

Coram: S.C.Dharmadhikari, J.

20.11.2007

P.C.:

1. Heard Mr. Damle appearing for the petitioner.

2. With his assistance I have perused the petition and the annexures thereto including the order of

the Assistant Registrar Co-operative Societies (Diary), Thane appointing an Administrator. That order was challenged by the aggrieved persons in appeal. That appellate authority has reversed the order by observing that the action under Section 78 of the Maharashtra Co-operative Societies Act, 1960 is a drastic and extreme step, that need not have been resorted to.

3. The grievance of the petitioner is that he was the one who has complained about the mismanagement of the concerned persons and upon his complaint the action under Section 78 was initiated by the Assistant Registrar. Therefore, the Appellate Authority ought to have impleaded him as party and heard his arguments.

4. In the facts and circumstances of the present case, when upon the complaint of the petitioner the action under Section 78 was taken, which action was challenged by the aggrieved persons in whom the right of appeal is conferred, then, the appellate authority was right in not hearing the extensive

arguments of the petitioner. The Appellate authority had before it the entire record and therefore, even if it has not directed impleading the petitioner as a party or not having heard him at length, does not vitiate its order. I see no reason to entertain this grievance before me in the peculiar facts of this case.

5. Even otherwise, the appellate authority has after perusing the record found that the acts of the concerned persons are not such as would warrant exercise of power under Section 78(1) of the Maharashtra Co-operative Societies Act, 1960. That action has to be resorted to not as a matter of course but in the circumstances set out in the said provision. It is well settled that Section 78(1) is not to be resorted to as a matter of routine, when other powers conferred on the Authorities under the MCS Act, to bring the office bearers to book. Section 78 is not the only power. In such circumstances, and when the power was exercised by the Assistant Registrar Co-operative Societies (Diary), Thane hastily, the appellate authority has

rightly stepped in. The order of appellate authority cannot be disturbed by me as if I am a court of further appeal. No illegality or error apparent having been pointed out so also the reasoned order being based on materials produced cannot be termed as perverse. Hence, the writ petition cannot be entertained. Writ Petition is summarily dismissed. No costs.

(S.C.Dharmadhikari, J)